

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

HAYDEN K.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2006090137

**DECISION**

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on December 12, 2006.

Vince Toms, Consumer Services Representative, Inland Regional Center represented the service agency, Inland Regional Center.

Krista K., the claimant's mother represented the claimant Hayden K. who was also present at the hearing.

The matter was submitted on December 12, 2006.

**ISSUE PRESENTED**

Should the service agency be required to provide funding for the purchase of an adaptive tricycle and an adaptive swing for the claimant?

**FACTUAL FINDINGS**

1. Claimant, Hayden K. (the claimant) is a seven-year-old boy who receives services from the Inland Regional Center (the service agency). The claimant has a diagnosis of

mental retardation and epilepsy and receives services from the service agency on that basis. The claimant also suffers from several medical disabilities. The claimant's birthday is August 2, 1999. He lives at home with his family and attends a special education program at the local public school.

2. The claimant is seven years old. He is able to sit up and maintain a sitting position and he can take a few steps with support. He is able to clap, grab, fully extend his arms, crawl and scoot and pull himself up. Hayden uses a gait trainer both at home and at school. The gait trainer assists him in his ongoing physical therapy in helping him to take steps. Hayden is non-verbal, but he does make sounds that sometimes communicate his needs. He requires total assistance with all of his daily living skills such as dressing, eating, and toileting.

3. Hayden attends school in a special education program at his local school district. He has a care giver that comes to the home that also goes with Hayden to school to assist him with activities while he is there. At school, Hayden rides the adaptive tricycles that are provided there, but they are only available to him two times a week since all the classes share the seven or so adaptive tricycles at the school. Hayden is able to push the pedals on the tricycle one or two times around and after that his care giver pushes him to give him encouragement.

4. The regional center currently provides Hayden's family with 24 hours per month of respite to be provided by a licensed vocational nurse. The claimant is also provided with 39 hours of Early Prevention Screening Diagnosis and Treatment (EPSDT). The EPSDT services are funded by Medi-Cal. In addition, California Children's Services (CCS) has provided Hayden with a gait trainer and some other assistive equipment at home.

5. Hayden's family is an active family that enjoys outdoor recreational activities. They are requesting the service agency provide them with an adaptive tricycle and swing so that they Hayden may use these items to enjoy outdoor recreation with the family. An adaptive tricycle is one designed to carry a larger child and keeps him secured in the seat and an adaptive swing is one generally made of strong plastic to contain the child with a belt that also holds the child in place. The regional center denied the family's request for this adaptive equipment.

6. The regional center based its denial on several factors. After assessing Hayden, it was determined that Hayden had difficulty actually using the adaptive tricycle, although family members and his care giver report that he is able to ride the adaptive tricycle at school. Nevertheless, the medical director at the regional center concluded that the gait trainer is a more suitable and beneficial device for Hayden's treatment. The adaptive tricycle and swing are recreational equipment. Although they undoubtedly have some emotional and physical benefits, such recreational equipment is just that, recreational. The use of the tricycle and the swing is not therapy and does not treat or alleviate any of the symptoms of Hayden's developmental disabilities. That is not to say that such outdoor recreational activity is not beneficial to Hayden. This type of activity is the same kind of fun activity that any family might provide to a child for the purpose of recreation and building physical skills and self-confidence. This requested equipment is simply the same type of play equipment that parents

are expected to purchase themselves just as any typical parent of any child would be expected to do.

## LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512 provides:

“As used in this part:

“(b) ‘Services and supports for persons with developmental disabilities’ means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, or towards the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .”

Welfare and Institutions Code section 4648 provides in pertinent part:

“(a)(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer’s individual program plan . . .

(a)(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents . . . determines will best accomplish all or any part of that consumer’s program plan.”

2. The evidence presented herein established that the claimant’s most beneficial treatment is with his gait trainer. He also benefits from outdoor recreational activities as any child would. He is currently able to ride an adaptive tricycle at school twice a week. The claimant’s needs are currently being met. The evidence presented by the claimant was insufficient to contradict this proof. The evidence established that the requested equipment is recreational in nature and therefore it is his parents’ responsibility to provide. The service agency does not need to provide such equipment, as set forth in Findings 1 - 6.

3. The regional center must monitor the effectiveness of all services it funds as well as the cost-effectiveness of the use of public resources. (Welf. & Inst. Code, §§ 4501 and 4646.) The claimant presented insufficient evidence of the need and effectiveness of the adaptive tricycle and swing as therapy to treat the claimant's developmental disabilities. The regional center did not abuse its discretion in denying the claimant's request for these items. Any services funded by a service agency should be a fiscally effective use of public funds. The regional center is therefore not required to grant the claimant's request to purchase an adaptive tricycle and swing for the claimant, as set forth in Findings 1 - 6.

4. Regional centers are required to identify and pursue generic resources for regional center consumers and are prohibited from spending regional center funds for generic services such as school services. (Welf. & Inst. Code, §§ 4659 and 4648, subd. a(8)). Welfare and Institutions Code section 4659, subdivision (a) provides that the regional center must identify and pursue all possible sources of funding for a consumer's services. The school district is providing the claimant with the use of adaptive recreational equipment. The claimant should continue to avail himself of those services at the school district. These services are currently being funded through a generic resource, the local school district. The services funded by a service agency need to be a fiscally effective use of public funds, and the service agency established that funding the adaptive recreational equipment would not be an effective use of public funds. The regional center is therefore not required to fund the purchase of an adaptive tricycle and swing for claimant, as set forth in Findings 1 - 6.

### ORDER

The claimant's appeal to require the service agency to purchase an adaptive tricycle and an adaptive swing for the claimant is hereby denied.

### NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: \_\_\_\_\_

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GREER D. KNOPF  
Administrative Law Judge  
Office of Administrative Hearings